1941.

File No. O Laqr/41

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Land Acquisition Act 1894

p-43

File No. O Laqr/41

Stl. Sectt. Slip 24 B e.

260-A

C O N T E N T S

Legal Department File No. O.Leg./ 41.

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No. 3208

Office of the

Remembrancer of Legal Affairs.

Bombay Castle, 9th April 1941.

From

P.N.Moos, Esquire, I.C.S.,

Remembrancer of Legal Affairs;

To

The Special Land Acquisition Officer for

Bombay City and the Bombay Suburban District.

Subject.-Apportionment of compensation in respect of acquisition of property at Dadar belonging to Janardhan Anant Dhuru and others.

Sir,

With reference to your letters No. L.A.Q.-2/14, dated the 22nd March 1941 and 31st March 1941, on the subject noted above, I have the honour to state that you should, if necessary in consultation with the District Government Pleader, Thana, invite the attention of the First Class Sub-Judge, Thana, to the mandatory provisions of sections 31(2) and 34 of the Land Acquisition Act, 1894, under which it is obligatory upon you to deposit the amount in the High Court, Bombay, and request him to reconsider his order regarding the deposit of the amount. If, inspite of this, the Sub-Judge insists that the compensation amount should be deposited in his court, you may deposit the same under protest and the matter may then be reported to the High Court, Bombay.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-
8-4-41

For Remembrancer of Legal Affairs.

Sd/-
8-4

S.A.K.
16-4

The

The Commissioner, Central Division, in his letter at page 1 ante presumes that the Land Acquisition Act, 1894, does not extend to the Mewassi Estates, The presumption is not correct. Section 1(2) of the Act provides that the Act extends to the whole of the British India. The Mewassi Estates form part of British India and consequently the Land Acquisition Act extends to these estates (See R.L.A.'s opinions Nos. 1846 dated the 19th July 1917, R.L.A.'s note dated the 14th May 1941). It appears, therefore, possible to acquire the lands in this case under the Land Acquisition Act. R.D. may, however, verify whether there would be any administrative difficulties in following the procedure laid down in this Act for acquisition of the lands.

2. In view of the position stated above, it does not appear necessary to consider the question whether it would be proper to sanction the sale of lands under section 27 of the Court of Wards Act, 1905.

Sd/- P.N.M.
26-5

Remembrancer of Legal Affairs.

U.R. to R.D.No. 4861, dated the 27th May 1941.

S.A.K.
16-4

Office of the R.L.A.

The question for consideration is whether the right of way over the passage land can be acquired without acquisition of the passage land itself. The answer to that question if is in the negative.

2. "Land" is defined in section 3, sub-section (a) of the Land Acquisition Act as including benefits to arise out of the land and the things attached to the earth or permanently fastened to anything attached to the earth. The Government has the power under the Act to acquire land can be compelled d hereby to create or grant an easement in favour ofa public body or a company even though the grant or creation of such an easement would be sufficient for carrying out the purposes of the public body or company. As observed by Lord Cranworth, L.C. in Pinchin vs. London and Blackwall Rail Co. (1855) 24L. J. ch. 417, "The legislature did not mean that if I have a field free from a right of way, I shall be bound upon any compensation to substitute for that, that a field subject toa right of way; if it is to be taken from me it must be taken in solido." It is in this sense that an easement cannot be acquired under the Land Acquisition Act. What the Swastik League is asking the Government to do is to compel the land owner to create or grant an easement over the passage land without acquiring the land itself . That cannot bedone. If after the land notified for acquisition is acquired, the League gets any easement of necessity over the passage land under section 13 of the Easements Act, (as in the illustration (1) to section 13 of the Act), that is a matter of legal consequence with which Government is not concerned. If the League does not desire to acquire the passage land but desires to rely upon its right to obtain an easement of necessity over the passage land Government need not insist on the acquisition of the passage land and may delete the words "together withright the right of way over the present access to the said land from Vithalbhai Patel Road" from the draft notification under section 6 of the land Acquisition Act, 1894.

S.A.K.
16-4

R.L.A!s opinion No. 11523, dated the 6th November 1939, did not relate to acquisition of an easement of necessity under the Easements Act, and has accordingly no bearing on the Leggue's view of the facts of this case.

Sd/-
17-6

For Remembrancer of Legal Affairs.

U.R. to R.D.. No. 5422, dated the 17th June 1041.

No. 5395

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 17th June 1941.

From

P.N.Moos, Esquire, I.C.S.,

Remembrancer of Legal Affairs.

To

The Collector of Bombay.

Subject.-Acquisition of land bearing C.S. No. 105of Parel-Sewri Division for approach road to the G.I.P. Railway land at Suparibag Road.

Sir,

With reference to the question raised in you-r lette-r No. L.A.Q. 140, dated the 19th April 1941, whether the notification issued by Government under section 4(1) of the Land Acquisition Act, 1894, for acquisition of the land referred to above is ultra vires, I have the honour to state that from the objection petition dated 30th August 1940 at pages 57-75 of the Collector's File and the letter of the General Manager G.I.P.Rly., dated 16th September 1940, meeting the objections at pp. 81-89of the File it appears that the Saraswati Mills Co., Ltd., granted a right of passage to the adjacent owners, namely, the objectors over part of the notified land (300 square yards) when the Company sold to the objectors the plots in their pr sent occupation. It is true that the objectors claim access to the land notified and also want if to be kept open for light, air and view. Under the sale-deed of 24-7-1901 on which the objectors' claim is based the Saraswati Mills Co.Ltd. granted to the objectors over the land in question "full an d free right and liberty at all times hereafter by day or by night and for all purposes with or without horses, carts, carriages or wagons laden or unladen to go, pass and repass and to drive cattle, sheep and other animals along, over and upon the road to the south of the hereditaments and premises hereby conveyed admeasuring 300 square yards". It is thus clear that the approach road belonged to the Saraswati Mills Co. Ltd. and the objectors have only a right of way over theland notified.

S.A.K.
16-4

They never became owners of the road, nor acquired any rights in regard to light, air or view. The objectors do not claim any interest in the land, except under the terms of the aforesaid Indenture of 1901. No other claim to the land has appeard so that the land notified, subject to the right of easement subsisting in favour of the objector, seems to have vested in the Crown as bona vacantia. Since the Railway Administration wish to have the exclusive use of the land in extinguishment of any rights it is necessary that the land should be acquired so as to vest it in the Administration free from all incumbrances. For th-is purpose, although the land vests in his Majesty, acquisition is still necessary to extinguish the easement subsisting in favour of the objectors. The authority of 52 L.J.CH. p.235 relied on by Counsel on behalf of the G.I.P.Rly. does not support the conclusion arrived at by Counsel that in order to extinguish an easement over Crown land, (the easement falling within the definition of sec.3(a) and (b) of the Land Acquisition Act), it is not competent for Government to acquire the servient heritage itself the ownership of which except for the easement vests in the Crown. In 34 Bom. 618, Chandavarkar J. held "To acquire a land is not necessarily the same thing as to purchase the right of fee-simple to it, but means the purchase of such interests as clog the right of Government to use it for any purpose they like ", and Batchelor J observed "Government, as it seems to me, are not debarred from acquiring and paying for the only outstanding interests merely because the Act which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. In such circumstances, as it appears to me, there is no insuperable objection to adapting the procedure to the case on the footing that the outstanding interests, which are the only interests to be acquires, are the only things to be paid for". For the purpose of extinguishing the easement over the lnd notified acquisition is warranted and

the notification issued under section 4 is not ultra vires.

2. The next question arising for decision is whether the acquisition should be proceeded with in view of the subsequent letter of the chief Engineer, G.I.P.Railway, dated 2.-6-1941, at pages 25 and 26 of the loose papers. The Chief Engineer now says in aparagraphs 4 and 8 of the said letter, "there can be no dispute that the only easement the occupiers of the plots adjoining the road can claim is an unrestricted right which they have got to use the road. The improvement of the road surface by the railway has not in any way curtailed the use of it by the complainants. On the contrary, certain benefits would accrue to the plot holders for which they are not being asked to contribute anything. The rights which the plotholders purchased from the Saraswati Mills company will not be extinguished by the Railway after the improvements are effected." In other words, the Railway now want the land subject to the easement in favour of the objectors and do not wish to extinguish that easement. If so, it is open to Government not to proceed further with the acquisition and for this purpose to cancel the notification already issued. Since no notification under section 6 has yet been issued it is not necessary to withdraw from the acquisition under section 48of the land Acquisition Act (see Advocate General's opinion No. 10, dated 16th March 1926, printed as an a companiment to G.R.,R.D., No. 6443/24, dated the 13th November 1926).

3. The papers accompanying your letter No. E.A.Q.140, dated the 3rd June 1041, including your office file, are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-
16-6
For Remembrancer of Legal Affairs.

S.A.K.
16.4

No. 6095

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 14th July 1941.

From

P.N.Moos, Esquire, Bar-at-Law, I.C.S.,

Remembrancer of Legal Affairs;

To

The Collector of Bombay.

BOMBAY.

Subject:-Acquisition of land bearing C.S.No. 105 of Parel-Sewri Division for approach road to the G.I.P.Railway land at Suparibag Road.

.....

Sir,

With reference to your letter No. L.A.Q.-140, dated the 20th June 1941 on the above subject, I have the honour to state that the question has been considered in detail and replied to in paragraph 1 of my opinion No. 5395, dated 27th June 1941. As the land now vests in the Crown subject to the right of easement of the adjoining owners, it is open to Government totransfer it to theRailway subject to the said right of easement over it.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-
14-7

For Remembrancer of Legal Affairs.

Sd/-
12-7

S.A.K.
16-4

Office of the R.L.A.

The questions raised for the R.L.A.'s consideration are;-

(i) Whether the land in question can be considered to be waste or arable so as to attract the provisions of section 17(1) of the Land Acquisition Act, 1894.

(ii) if the urgency clause is not applicable to the portion of the land built over, whether there is any objection to handing over possession of the remaining open land.

2. As regards the first question, section 17(1) of the Land Aqquisition Act, 1894 provides that in cases of urgency , whenever the Provincial Government so directs, the collector thoughno such award has been made, may,on the expiration of fifteen days from the publication of the notice mentioned in section 9(1) , take possession of any waste or arable land needed for public purposes or for a company, Such land shall thereupon vest absolutely in the Crown free from allincumbrances. It is clear that under section17, the collector may be empowered by y.. Government to take immediate possession of "waste or arable" land. The expression "waste or arable" has been interpreted in R.L.A.'s opinion No. 5488, dated the 30th June 1938to which the attention of the R.D. is invited. If the land has houses thereon and forms as a whole a building site(cf. rule 85 of Bombay Land Revenue Rules, 1921) the notification would not be correct and such land should not be incorporated in the notification under section17(1) of the Land Acquisition Act, 1894(vide R.L.A.'s opinion No. 656, dated the 18th January 1939). Section 17(1) does not apply to lands occupied by roads, tanks, buildings, gardens, orchards etc.(See R.L.A.'s No. 5488,dated the 30th June 1938 and para 117 of Anderson's Land Acquisition Manual). In the present case , collector of Bombay and the special Land Acquisition Officer state that the land in questionisa piece of vacant land with a two storeyed ~~pucca-bu-~~ pacca building and two garages for the ambulance of the League. It is, therefore, clear that the whole land comprises a building site.

Consequently, section 17(1) of the Act would not be applicable to the land in question, As advised by the R.L.A.in his opinion No. 656. dated the 18th January 1939, the only feasible course for the R.D. to adopt is to cancel Notification No. 4393/39(a), dated the 23rd June 1941 and issue a fresh notification.

3. As regards the second question, since the open land forms part of the building site it cannot be deemed to be "waste or arable land" The land is occupied and is used for non-agricultural purposes. For the reasons stated above, the proposal of the R.D. does not appear to be legally feasible.

4. Adverting to the letter dated the 4th July 1941 from the Solicitor of the Claimant addressed to the collector of Bombay at p. 129, the third question referred to the R.L.A. for advice is whether it is necessary to refer the case to the High Court as urged by the claimant.

5. Section 49(1) of the Land Acquisition Act, 1894, inter alia provides that the provisions of the Act shall not be put in force for acquiring a part only of a house, if the owner desires that the whole of such house shallbe so acquired. The second proviso recites that if any question saha shall arise as to whether any land proposed to be taken under this Act does or does not form part of a hourse, the collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined. The Solicitor appears to urge that the wholeland enclosed by the compound wall which has access only through his client's land is parts of his client's house and consequently the whole house should be acquired under section 49 of the Act . The question at issue is whetherthe land proposed to be acquired does or does not form part of the house as contemplated by section 49(1)of the Act. This does not involve any question of law but it is a question of fact for the R.D.to decide in consultation with the collector, If the R.D. decides that the land does form part of the house, it will have to consult the Swastik League whether it is prepared to meet the cost of Reference to the High Court,

S.A.K.

and abide by its decision. If the Leaggue agrees to such a course being adopted and to pay the costs of Reference, the Collector may beasked to make a Reference to the High Court.

Sd/- P.N.M.

15-7

Remembrancer of Legal Affairs.

Sd/-

15-7

U.R. to R.D.No. 6210, dated the 16th July 1941.

S.A.K.
16-4

No. 7252.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 18th August 1941.

From

P.N.Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs.

To

The Special Land Acquistion Officer for Bombay City and Bombay Suburban District, Bombay.

Subject:- Apportionment of compensation in respect of acquisition of property at Dadar belonging to Janardhan Anant Dharu and others.

Sir,

With reference to your letter No. L.A.Q.2/14, dated th 31st July 1941, on the above subject, I have the honour to state that th section 29 of the Land Acquisition Act, 1894, provides that where there are several persons interested, if such persons agree in the apportioment of the compensation, the particulars of such apportioment shall be specified in the award. and as between such p-ersons the award shall be conclusive evidence of the correctness of the apportionment. The language of this section is wide enough to include both the stage prior to the making of the award under section 11, and the stage after the award till the Collector has sent the compensation to the Court under section 31(2). Parties may not be able to come to an agreemaat before the award is made under section 11, but before the Collector has sent the money to the court, the parties may come to terms and desire the Collector to apportion and make payment according to their agreement. Section 29 permits the parties to take this course without having to go to the court and the Collector would note the particulars of the agreement in the award and take further action accordingly (vide page 304 of Gupta's Land Acquisition Act and Principles of Valuation).

2. From the fact that you now request advice of the Remembrancer of Legal Affairs whether you should deposit the whole amount of compensation with the High Court, it is

presumed that you have not still deposited the amount of compensation with the High Court under section 31(2) of the Land Acquisition Act, 1894. If so, under section 29 of the Act it appears open to the ~~pal~~ plaintiff No. 1 and defendant No. 1, as managers of the joint Hindu family, to file an agreement on terms of the judgment of the First Class Sub-Judge, Thana, each party agreeing to take half the amount of compensation awarded. As stated above, you may then note the particulars of the agreement in the award and take further action accordingly.

3. I have the honour to inform you for your guidance that all references to the Remembrancer of Legal Affairs should be forwarded through the Collector or the Administrative Department as required by rule 29 of the Law Officers' Rules and not direct.

4. The papers accompanying your letter under reference are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-
~~158~~ 15-8

For Remembrancerof Legal Affairs.

S.A.K.

No. 8604

Office of the

Remembrancer of Legal Affairs.

Bombay Castle, 2nd October 1941.

From

P.N.Moos, Esquire, Bar-at-Law, I.C.S.,

Remembrancer of Legal Affairs.

To

The Collector of Bombay.

Subject:- Acquisition of land bearing C.S. No. 105 of Parel-Sewri Division for approach road to the G.I.P.Rly. land at Suparibag Road.

Sir,

The first question raised in your letter No. L.A. 140 dated 15th Septemaber 1941 is who should hand overpossession of the land to the Railway Administration. As stated in ~~my~~ my letter No. 6095, dated 14th July 1941, since the land now vests in the Crown under section 174 of the Government of India Act, 1935, subject to the right of easement of the adjoining owners, it is for Government to transfer it to the Railway subject to the said right of easement. The necessaryorders transferring the land to the G.I.P.Rly Administration should be issued by Government in the Revenue Department, and thereafter you may hand over possession of the same to the Railway Administratio n (cf. sections 24 and 25 of the Bombay City Land Revenue Act, 1876).

2. As regards the second question raised in your letter namely, whether Government can permit the Railway Administration to cut down the two plam trees without any compensation to the person claiming them, it is not understood how and on what grounds the adjoining holder Mr. Avasha can claim these trees if as stated in paragraph 1 of your letter the trees stand on the passage area. You should, therefore, inquire into the matter, and if it is found that the trees, as

S.A.K.
17-4

a matter of fact, are standing on the passage land, which vests in the Crown, Mr. Avasha will have no claim to them or to any compensation when they are cut.

3. As regards the third question whetherunder section 48(2) of the Land Acquisition Act, 1894, you should determine the costs which the objectors have incurred for the attorney and architect in respect of the proceedings under section 5A of the Act, it may be pointed out that a notification under section 4(1) of the Act is not the same thing as a declarationunder section 6(1). It need not necessarily be followed by a declaration under section 6, for the project may be abandoned or Government may, in their decisionon objections raised under section 5A, refuse to proceed further. In such a case the notification is cancelled and there is no question of any withdrawal. In my letter Nol 5395, dated 17th June 1941, I advised that since no notification under section 6 of the Land Acquisition Act. was issued, it was not necessary to withdraw from the acquisition under section 48 of the Land Acquisition Act. A party would not be entitled to any compensation for his expense-s between the stage of ~~xxi~~ notice under section 4(1) and the notice under section 9(vide p. 379 of Gupta's Land Acquisition Act). In accordance with this view, it does not appear that the objectors will be entitled to any costs incurred in respect of the proceedings under section 5A of the Act, and consequently you need not determine them.

I have the honour to be,
Sir,
Your most obedient servant,

O.C. P.N.Moos.

29-9

Remembrancer of Legal Affairs.

Sd/-.
29-9

D.S.(before issue) Sd/-
29-9

A.L.R.(" "). Sd/-

S.A.K.

Office of the R.L.A.

The R.L.A.'s opinion at pages 131-135 ante was given with reference to the letter of the attorneys of the claimant dated 4th July 1941 at page 129 ante. In this letter, as pointed out by the Advocate General in his opinion at page 149 ante, the attorneys did not contend that the land proposed to be acquir d was part of a house and it was therefore held that no reference to the Court was called for under section 49(1) of the Land Acquisition Act, 1894. It appears, however, from the papers now forwarded by R.D. that there has been further correspondence in this matter (see pp. 155-157 ante) a that the owner of the property has as a matter of fact raised the question that the land proposed to be acquired forms part of a house. Under these circumstances, the view taken by the Advocate General that the Collector is bound to make a refere to the Court under section 49(1) of the Land Acquisition Act is correct and may be followed by Government.

O.C. Sd/- P.N.Moos.

10-10

Remembrancer of Legal Affairs.

R.S.K.
10-10

U.R. to R.D.No. 8890 dated the 11th October 1941

S.A.K.
17-4

Copy.

Re: Acquisition of land at Vithalbhai Patel Road for the Swastik League.

Note for the Advocate General.

Sent herewith is the relevant file.

The Swastik League moved Govt. for the acquisition of certain land at Vithalbhai Patel Road being a part of C.S.No. 1268 and in consequence Govt. issued a Notification under Sec. 4 of the L.A. Act 1894(p.55) inviting objections against the Acquisition.

Thereupon one Revantibai Bhaurao Sambhu submitted her objections to the acquisition (pp. 257-267) and the Swastik League replied to them (p. 271-277). These objections were heard by the Collector and after inspection of the site were in effect rejected by him (p. 255).

Thereafter on the 23.6.1941, Govt. issued a Notification (p. 253) in accordance with Sec. 6 of the said Act including therein a provision for taking possession of the land within 15 days from the publications thereof (vide Sec. 17(1). It was later pointed out to Govt. that the said provision for taking possession would not be made in the present case and thereupon by a further Notification (p. 305) dated 25.7.1941 the said provision was deleted from the original Notification at p. 253.

On 4th of July 1941 (p. 291) Mr. Karnik, Solicitor for Revantibai wrote to the Collector and L.A. officer requiring him to refer to the High Court for decision under Sec. 49 of the Act the point therein raised viz: that acquisition of a part of his client 's holding is against the spirit of the Act. The reasons why his client has raised this question are set out in the letter.

The collector was of opinion that the Land proposed to be acquired does not form a part of the houses contemplated in Sec. 49(1) of the Act Govt. agreed in that opinion and the

S.A.K.
17-4

acquisition might therefore proceed (p. 307)

The Spl. Land Acquisition Officer, however, defers from this opinion (P. ~~12~~ 313) and he conteds that Sec. 49 which is mandatory leaves no option to the collector; hence it has become necessary to submit these papers for opinion. S. 49 says "he (the collector) shall refer the determination of such question (whether any land proposed to be taken under this Act does or does not form a part of the house manufactory or buildings) to the Civil Court . It cannot be denied that when an objection is made that a piece of land proposed to be acquired under tne L.A. Act is a part of the objector's hous.. he collector much under S. 49 either acquire the whole house or refer the matter to Court. Saraswati Pathack vs. L.A.Dy. Colle ctor of Champaran 2 P.L.J. 204.

Counsel will please, however observe from the letter of the objector's Solicitors (p. 291) that he does not call the land intended to be acquired as a part of his clients house but advisedly calls it as "a part of his cliants holding". It may be mentioned that the whole holding is let out inparts. The land marked x on the plan at p- 279 is occupied by a Woodwork shops while the land marked Y is unoccupied the land surrounded by red lines is now occupied by the League and the front part of the premises is covered by a chawl.

Even in her objections (p.257-267) the objectors calls theland as a part of her holding (not house) and she does not also allege that the land intended to be acquired is reasonably required by the full and unimpaired use of her house. Her main objection is that the acquisition of the land in questionwill render the rest of her holding valuless and it will also hinder her from developing Her property. If this is the grievance the Act provides for compensation.

It is therefore submitted that the Collector is justified in not agreeing to make the reference.

In the circumstances Counsel will please advise whether the Collector is bound to refer this matter to the Court as required by the objector or whether he should allow her if she is so advised to move the Court under S. 45 of the Specific Relief Act.

S.A.K.

17-4

Copy.

Opinion.

It is clear, having regard to the language of the Section and the decided cases (2 P.L.R. 204; 16 Cal. W.N. 327; and, 33 Cal. 665), that, if the owner raises a question as to whetherthe land proposed to be taken does or does not form part of a house, it is obligatory on the Collector to refer the determination of such a question to the Court. The Collector cannot himself decide the question.

In the present case the owner, by her Attorneys' letter dated the 4th of July 1941, no doubt contended, not that the land proposed to be acquired was part of a house, but that it was a part of her holding and that the acquisition of such a part was against the spirit of the Act. Her contention was however understood to be that the land proposed to be acquired formed part of a house as contemplated in Sec. 49(1) of the Act. See the Memorandum dated the 25th of July 1941 at p. 297 of the File. Pursuant to this Memorandum, the Collector by his letter dated the 29th of July 1941, stated that in his opinion the land proposed to be acquired did not form part of a house as contemplated in Sec. 49(1) of the Act, It appears from the letter of the Spl. Land Acquisition officer dated the 22nd of August 1941 and the letter of the Attorney of the owner dated the 5th of August 1941 that the owner did raise before him the question that the land proposed to be acquired formed part of a house.

It is thus clear that the question contemplated by Sec. 49(1) has in fact been raised by the owner. The collector is , therefore, bound to make a Reference to the Court under that Section as required by the owner.

Sd/- M.C.Setalvad

Advocate General

9.9.41

S.A.K.
17-4

Office of the R.L.A.

Sub-section (1) of section 4 of the land Acquisition Act, 1894, provides, inter alia, that the Collector shall cause public notice of the substance of the notification issued under that section to be given a convenient places in the locality concerned. In order to empower Mr. Gandhi to exercise the functions of the Collector under this section in this case, it will be necessary to appoint him under section 3(c) of the Act to perform these functions. Although the section does not require that such appointment shall be made by a notification in the official Gazette, it is desirable that the appointment should be published in the Gazette. A draft notification for this purpose is esent herewith.

2. Sub-section(2) of sect on 4 of the Land Acquisition Act provides inter alia that after the steps referred to in sub-section (1) are taken, it shall be lawful for any officer, either generally or specially authorized by Government in this behalf and for his servants and workmen to enter upon any land in such locality, etc. This sub-section does not provide for the exercise of any functions by the Collector. For authoriaing Mr. Gandhi to perform the acts. referred to in this section, he is not to be appointed to perform the functions of a collector in exercise of the powers under clause (c) of section 3 of the Act. The draft G.R. at page 206 ante sent by R.D.which provides for appointment of Mr. Gandhi under section 3(c) to perform the functions of a Collector under section 4(2) is not, therefore, in order. The aurhorisation will have to be made under section 4(2) itself. The necessary draft for this purpose is also sent herewith. As pointed out in R.L.A.'s opinion No. 5755, dated 11th NOvember 1937, the authorisation is not required to be notified in the official Gazette.

O.C. P.N.M.

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Remembrancer of Legal Affairs.

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S.A.K. U.R. to R.D. (thro: F.D.), No. 251 9-10-41
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Office of the R.L.A.

The first question for consideration is whether the land acquired on behalf of the Parsee Public School Society for the purposes of a public school can be permitted to be used for purposes of a housing scheme. It appears that the Society has been put into possession of the greater part of the acquiredland. It has entered into two agreements dated the 18th November 1931 and 22nd August 1940 with Government under section 41 of the Land Acquisition Act. Under this section the agreements, so far as regards the terms on which the public are entitled to use the school, have the same effect as if they had formed part of the Act. The Sanad to be granted to the Society embodies the terms of these agreements. Under clause 4(1) of the agreement, the Society is to use the said lands only for the purpose of a School building, hosteletc. Consequently the Society cannot use the land for the purpose of a housing seheme, that purpose being other than the purpose forwhich the land was acquired and vested as specified in the agreemant. (See. R.L.A.'s opinion No. 1946 dated the 9th April 1937).

2. The next question for consideration is whether Government can resume the land, and utilise it for a housing scheme or give it back to the Society for that purpose. The Society cannot sell the land to Government as that would contravene the provisions of clause 3 of the agreement which provides that the land when vested under the agreement in the Society shall be held by it as its property to be used for the purpose contemplated in the agreement . Nor can Government resume it for the reason of any intended breach of that clause. Clause 6 of the agreement provides that if the said land is not used for a bona fide school purpose or is used for any purpose other than the one specified in the agreement (vide clause 4(1)), or in case the Society commits breach of any of the conditions mentioned in sub-clauses (2) to (8) of clause 4 and of the conditions in clause 5, the said land shall be liable to resumption

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by Government subject to the condition that the amount spent by the Society on the said land or its value at the time of resumption whichever is less but excluding the cost or valueof any structure standing on the said land shall be paid as compensation to the Society. Clause 4(2) provides that the Society undertakes the work of constructionof the buildings within two yearsand to complete the same within four years from the date of acquisition . Consequently Government cannot resume the land under clause 6 unless and until there has been as actual breach of the conditions, suchas the failure of the Society to start any construction within two yens or the use of the land for a purpose other than that recited in clause 4(1). If, however, the Parsee Public School Society is now willing to express in writing its clear and unequivocal decision to abandon the Public School scheme for which the land was acquired and to relinquish the land to Government upon an undertaking to indemnify Government against any litigation relating to or arising out of such relinquishment, there would be no objection to Government accepting the relinquishment, without waiting for a breach, on the same terms as apply to resumptionof the land under clause 6 of the agreement. After resumption it wouldbe open to Government in whom the land would vest absolutely, to hand over the land to the Society for the purpose of a housing scheme on such terms as may be agreed upon, or to utilise the land itself in such manner as it may deem fit. (See also R.L.A.'s opinion No. 197 Confl. dated the 25th October 1935 and R.L.A.'s opinion No. 1946 dated the 9th April 1937).

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U.R. to R.D.No. 4880, dated the 27th May 1941.

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